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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

ROY L. FROST,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent.

) CV. NO. 06-00620 DAE-BMK
) CR. NO. 02-00117 DAE
)
) ORDER FINDING THAT PETITIONER
) ROY L. FROST HAS WAIVED HIS
) ATTORNEY-CLIENT PRIVILEGE AS
) TO COMMUNICATIONS/ISSUES
) RAISED IN HIS 28 U.S.C. §
) 2255 PETITION AGAINST HARLAN
) KIMURA

ORDER FINDING THAT PETITIONER ROY L. FROST HAS WAIVED
HIS ATTORNEY-CLIENT PRIVILEGE AS TO COMMUNICATIONS/ISSUES
RAISED IN HIS 28 U.S.C. § 2255 PETITION AGAINST HARLAN KIMURA

| On November 20, 2006, Petitioner Roy L. FROST ("FROST")
filed a petition pursuant to 28 U.S.C. § 2255 challenging the
sentence of 17 months incarceration imposed by this Court on June
23, 2006, upon FROST's revocation of his supervised release.
Petitioner FROST did not appeal his conviction or sentence on
direct appeal to the Ninth Circuit, and relies upon his present
petition to challenge his sentence.

The single claim raised by FROST in his § 2255 petition is that he did not receive effective assistance of counsel because his then-attorney, Harlan Kimura, failed to file a notice of appeal for the judgment entered on June 30, 2006.

The Court finds that in making (and pursuing) this allegation of ineffective assistance of counsel against Mr. Kimura in his present § 2255 petition, Petitioner FROST has waived the attorney-client privilege which might otherwise apply to the communications between the defendant and his attorney, as to the issue raised in the § 2255 petition, as well as to communications between petitioner and Mr. Kimura reasonably related to such claim. See, Tasby v. United States, 504 F.2d 332, 336 (8th Cir. 1974), cert. denied, 419 U.S. 1125 (1975).

Accordingly, in order to investigate the ineffective assistance of counsel claim made by Petitioner FROST in his present § 2255 petition (and to the reply to such claim), the United States Attorney is entitled to inquire into certain communications between Petitioner FROST and Mr. Kimura, which communications would otherwise be protected by the attorney-client privilege. Consequently, Mr. Kimura is authorized to provide information to the United States Attorney about such attorney-client communications between Petitioner FROST and Mr. Kimura, to the extent such communications involve, or are reasonably related to, the ineffective assistance of counsel

claim made in FROST's Section 2255 petition filed in this Court on November 20, 2006.

IT IS SO ORDERED.

DATED: _____, at Honolulu, Hawaii.

DAVID ALLEN EZRA
U.S. District Court Judge

ROY L. FROST v. USA
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CR. NO. 02-00117 DAE
"Order Finding that Petitioner Roy L. Frost has Waived his Attorney-client Privilege as to Communications/Issues Raised in his 28 U.S.C. § 2255 Petition Against Harlan Kimura"